

S Riback



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Herley Industries, Inc.--Reconsideration

File: B-237960.2

Date: August 29, 1990

Gerald I. Klein for the protester.
Peter D. Butt, Esq., Office of the General Counsel,
Department of the Navy, for the agency.
Scott H. Riback, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Request for reconsideration of decision is denied where the protester essentially only restates its initial arguments and expresses disagreement with initial decision.
2. Allegation concerning solicitation impropriety which is raised for the first time in request for reconsideration is dismissed as untimely.

DECISION

Herley Industries, Inc. requests reconsideration of our decision in Herley Indus., Inc., B-237960, Apr. 5, 1990, 90-1 CPD ¶ 364. In that decision, we denied Herley's protest against its exclusion from the competitive range under request for proposals (RFP) No. N00600-89-R-0931, issued by the Department of the Navy for the acquisition of transponder sets to be used as command control guidance systems in supersonic drones. In its reconsideration request, Herley argues that we erroneously concluded that the firm had been properly eliminated from the competitive range. Herley also argues that certain solicitation terms were unduly restrictive of competition. We deny the request for reconsideration.

In our initial decision, we concluded that the agency had reasonably eliminated Herley from the competitive range because its proposal, as revised after discussions, still contained certain deficiencies which rendered its proposal unacceptable. We found that Herley had failed to address

the agency's concerns with respect to the firm's testing methodology and procedures, had failed to offer adequately qualified personnel in sufficient numbers in accordance with the RFP's requirements and had failed to provide the agency with a material diagram specifically requested during discussions.^{1/} We also concluded that the agency's discussion questions were sufficiently explicit to lead Herley into the various areas of its proposal which the Navy found deficient and that the agency had conducted meaningful discussions.

Herley disagrees with our conclusion that the firm was reasonably eliminated from the competitive range and that discussions were meaningful. Herley essentially repeats the arguments it made during its initial protest. For example, Herley argues that in our original consideration of the testing methodology and procedures deficiency contained in the firm's proposal we failed to consider the contents of Herley's proposal revisions submitted in response to the agency's question on this subject and failed as well to consider the firm's "voluminous cogent information" on testing contained in its initial proposal. Herley thus continues to argue that its proposal, in the area of testing, was sufficient to meet the requirements of the RFP and, consequently, its proposal improperly was eliminated from the competitive range.

In our prior decision, we specifically addressed these contentions. From our examination of its record, we found reasonable the agency's conclusion that Herley's proposal merely agreed to perform the RFP's required testing and either "parroted back" the RFP's specifications or failed to describe with any degree of specificity the firm's testing procedures or methodology. We also found from the record that although the deficiency was raised in discussions, the Navy reasonably found that Herley's revised proposal failed


^{1/} In our initial decision, we did not specifically address the adequacy of Herley's cost proposal which was another deficiency identified by the agency. On reconsideration Herley argues that our silence on the matter indicates that we found the agency's objections to Herley's cost proposal unreasonable. To the contrary, we did not consider the propriety of the agency's determination regarding the adequacy of Herley's cost proposal since we found that the agency properly determined that Herley's technical proposal was unacceptable and, therefore, the firm's proposal was not eligible for award, regardless of the terms of its cost proposal. See Evaluation Technology, Inc., B-232054, Nov. 15, 1988, 88-2 CPD ¶ 477.

to cure these deficiencies. Herley's other arguments on reconsideration regarding the other deficiencies noted in the firm's proposal and the adequacy of discussions are either restatements of the firm's original arguments or expressions of disagreement with our earlier decision.

Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1990), a party requesting reconsideration must show that our prior decision contained either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. Repetition of arguments made during the original protest or mere disagreement with our earlier decision does not meet this standard. See Travel Centre--Request for Recon., B-236061.3, Mar. 22, 1990, 90-1 CPD ¶ 316. We cannot conclude that the protester has offered any new arguments or information justifying reconsideration of our earlier decision.^{2/}

Also, in its request for reconsideration, Herley argues for the first time that an RFP provision requiring engineering degrees and other specific transponder experience was intended to eliminate Herley from competing for the subject requirement. This issue is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), require that protests concerning alleged improprieties contained in a solicitation be filed prior to the closing date set for the receipt of initial proposals. Here, Herley was aware of the inclusion of the subject RFP provision prior to the date set for the submission of initial proposals and yet did not protest that provision until this reconsideration.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel

^{2/} Herley argues that the agency improperly waived the RFP's requirement for the production of a first article in its contract award to Vega. Since we found Herley properly was eliminated from the competitive range, and is not in line for award, Herley is not an interested party within the meaning of our Bid Protest Regulations to raise this issue. 4 C.F.R. §§ 21.0(a) and 21.1(a); Cook Travel, B-238527, June 13, 1990, 90-1 CPD ¶ 571.